Supreme Court, U.S.
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No. 93-1641

In The

Supreme Court of the United States

October Term, 1993

JOHN DOE, A MINOR, BY AND THROUGH HIS NEXT FRIENDS AND PARENTS JAMES AND MARY DOE,

Petitioners,

v.

THE BOARD OF EDUCATION OF TULLAHOMA CITY SCHOOLS; CHARLES EMBRY, SUPERINTENDENT,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

WHETHER THE TENNESSEE SPECIAL EDUCATION STATUTE DOES NOT REQUIRE A HIGHER STANDARD FOR THE EDUCATION OF DISABLED CHILDREN THAN THE FEDERAL STANDARD UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT, 20 U.S.C.A. § 1400 *ET SEQ.* (WEST SUPP. 1992), AS INTERPRETED BY THIS COURT.

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RESPONDENTS' BRIEF IN OPPOSITION

The respondents, the Board of Education of Tullahoma City Schools and Charles Embry, Superintendent, respectfully pray that the writ of certiorari requested by the Petition be denied.

JURISDICTION

Invoking federal jurisdiction under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.*, petitioners brought this suit in the United States District Court for the Eastern District of Tennessee after an administrative decision in favor of the respondents. On May 29, 1992, the Eastern District entered judgment for the respondents.

On petitioners' appeal, the Sixth Circuit on November 5, 1993, entered a judgment and an opinion affirming the Eastern District's decision. No petition for rehearing was filed.

STATEMENT OF THE CASE

The respondent incorporates by reference the statement of the facts found in the opinion of the Court of Appeals below. *Doe by and through Doe v. Board of Educ. of Tullahoma City Schools*, 9 F.3d 455, 456-57 (6th Cir. 1993).

REASONS FOR DENYING THE WRIT

I. THE CIRCUITS ARE NOT IN CONFLICT WITH THE APPLICABLE DECISIONS OF THIS COURT NOR WITH EACH OTHER REGARDING THIS ISSUE.

Petitioners argue that the Court should grant review in this case because of a claimed conflict between the circuits on the issue of state standards for special education.[1] This case, however, does not present a conflict, because the "conflicting" cases cited by the petitioners all agree that a state may impose higher standards in special education cases. The differing holdings in the cases result from the differing state laws in each case, each with its own statutory language and state court interpretation background.

The petitioners correctly state that the First and Third Circuits have held that a state may choose to impose higher standards upon school districts in special education cases than those under the federal Individuals with Disabilities Education Act. No split between the circuits is evident in this finding, however, since the Sixth Circuit acknowledges and reaffirms this view in the present case. *See Doe by and through Doe v. Board of Educ. of Tullahoma City Schools*, 9 F.3d 455, 457 (6th Cir. 1993): "In this, and other circuits, it is settled that 'even if a school district complies with federal law, it may still violate the [federal] Act if it fails to satisfy more extensive state protections that may also be in place.' " (citations omitted).

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[1] This Court has never dealt with issues involving the Tennessee special educational law.

The First Circuit case cited by the petitioner, *David D. v. Dartmouth School Committee*, 775 F.2d 411 (1st Cir. 1985), presents no conflict with the present Sixth Circuit decision. The *David D.* court held that there is no Eleventh Amendment immunity in special education cases brought in federal court. The court also found that there was a higher standard under Massachusetts state law in special education cases. However, this finding was not based solely upon broad introductory language taken out of context, such as the petitioners urge in this case. The First Circuit decision rests upon a clearer statutory mandate which had previously been interpreted by Massachusetts' highest court. In *Stock v. Massachusetts Hospital School*, 392 Mass. 205, 211, 467 N.E.2d 448, 453 (1984), the court held that Massachusetts law requires the Department of Education to administer special education programs "to assure the maximum possible development of a child with special needs." No Tennessee state court case has been cited by petitioners interpreting the relevant statute.

The Third Circuit case cited by the petitioners is similarly distinguishable from the Sixth Circuit's decision in this case. In *Geis v. Board of Educ. of Parsippany-Troy Hills*, 774 F.2d 575 (3d Cir. 1985), the court held first that Eleventh Amendment principles do not prevent the federal courts from enforcing a higher state standard in special education cases and second, that New Jersey law did require a higher standard. Unlike the Tennessee statute at issue, however, the New Jersey law contained a more detailed description of the duties of the local school districts:

> The Legislature hereby finds and determines that the security and welfare of the State require

> that all school-age children be assured *the fullest possible opportunity to develop their intellectual capacities*. In order to achieve this objective it is the intent of this Legislature to require that the State and local communities identify and provide remedial services for handicapped children in both public and nonpublic schools.

N.J.Stat.Ann § 18A:46-19.1 (West Supp. 1985) quoted by *Geis*, 774 F.2d 575, 582 (emphasis in quotation). Further, the *Geis* court had additional statutory language to rely upon in its interpretation of the New Jersey standard: special education students were to be provided services "according to how the pupil can best achieve success in learning . . . " N.J.Admin.Code tit. 6 § 6:28-2.1 (1978) (repealed).

It becomes even more apparent that there is no conflict between the Third Circuit and the Sixth Circuit in view of the fact that the holding in *Geis* was rendered moot when New Jersey decided that it wished to conform to the federal standard in special education cases. *See Lascari v. Bd. of Educ. of the Ramapo Indian Hills Regional High School*, 116 N.J. 30, 47-48, 560 A.2d 1180, 1189-1190 (1989).[2]

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[2] "For the future, we note that the Department of Education has adopted new regulations, which took effect after oral argument on May 15, 1989. One of those regulations, N.J.A.C. 6:28-1.1, adopts the federal standard, which Rowley defines as an education from which the child could benefit. 458 U.S. at 200, 102 S.Ct. at 3048, 73 L.Ed.2d at 708. Previously, the United States Court of Appeals for the Third Circuit had interpreted the New Jersey statutory and regulatory scheme as providing a higher level of education. Board of Educ. E. Windsor Regional School v. Diamond, 808 F.2d 987, 992 (3d Cir.1986). As the comments to

II. THERE IS NO CONFLICT BETWEEN DECISIONS OF THIS COURT OR ANY OTHER FEDERAL APPELLATE COURT AND DECISIONS OF A STATE COURT OF LAST RESORT, BECAUSE NEITHER THE U.S. SUPREME COURT NOR ANY OTHER CIRCUIT HAS EVER INTERPRETED THE TENNESSEE STATUTORY LANGUAGE AT ISSUE.

Supreme Court Rule 17.1(c) provides that the Court will consider review where a "federal court of appeals has decided an important question of *federal* law which has not been, but should be, settled by this Court. . . . " (emphasis added). The questions presented by the petitioner present this Court with a single issue of Tennessee state law – not an issue of federal law. The petitioners argue that the Tennessee special education law requires school districts to "maximize the capabilities" of special education students. Neither the U.S. Supreme Court, any U.S. Court of Appeals, nor any Tennessee state court has ever held that this provision of the Tennessee code has any substantive effect. In fact, the Iowa Supreme Court has interpreted identical language – "maximize the capabilities" – found in the prefatory language to its own special education statute, holding that the Iowa standard for special education children equated to the federal standard. In *Buchholtz v. Iowa Dept. of Public Instr.*, 315 N.W.2d 789 (Iowa 1982), the court determined that the appropriate educational standard was that of *Board of Education v.*

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the 1989 regulations make clear, the Department of Education disagrees with that interpretation. The relevant comment states that 'it is necessary to clarify that the standard in N.J.A.C. 6:28 has been the same as the Federal standard.' 21 N.J.R. 1385, 1391 (May 15, 1989)."

Rowley, 458 U.S. 176, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982), the current standard under the federal Act.

The meaning of "maximize the capabilities" is an issue of Tennessee state law, and if a state wishes to expand its standard governing special education, this should be left up to the state legislature or courts, not the federal judiciary.

CONCLUSION

For all the foregoing reasons the petition for a writ of certiorari filed by petitioners should be denied.

Respectfully submitted,

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